



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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Released: June 23, 1999

**Comment Sought On Remand Of The Commission's
Reciprocal Compensation Declaratory Ruling By
The U.S. Court Of Appeals For The D.C. Circuit**

Pleading Cycle Established

CC Docket Nos. 96-98, 99-68

COMMENTS: July 21, 2000

REPLY COMMENTS: August 4, 2000

On February 26, 1999, the Commission released a Declaratory Ruling and Notice of Proposed Rulemaking to address the issue of inter-carrier compensation for the delivery of telecommunications traffic to an Internet service provider (ISP).¹ In the *Reciprocal Compensation Ruling*, the Commission determined that ISP-bound calls are not local calls subject to reciprocal compensation under our rules implementing section 251(b)(5) of the Act.² Using an "end-to-end" analysis of these calls, the Commission concluded that ISP-bound calls do not terminate at the ISP's local server, but instead continue to one or more Internet websites that are often located in another state.³ It therefore found that ISP-bound calls are jurisdictionally mixed, largely interstate, and thus not subject to reciprocal compensation.⁴ The Commission also acknowledged that there was no federal rule establishing an inter-carrier compensation mechanism for such traffic or governing what amounts, if any, should be paid.⁵ In the absence of a federal rule regarding the appropriate inter-carrier compensation for ISP-bound traffic, the Commission held that parties were bound by their interconnection agreements as interpreted and enforced by state commissions.⁶ The Commission sought comment, therefore, in the *Reciprocal Compensation Ruling*, on a federal inter-carrier compensation mechanism for ISP-bound traffic.⁷

¹ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, 14 FCC Rcd 3689 (1999) (*Reciprocal Compensation Ruling*).

² *Reciprocal Compensation Ruling*, 14 FCC Rcd at 3706; see also 47 U.S.C. § 251(b)(5).

³ *Id.* at 3695-3703.

⁴ *Id.* at 3690, 3695-3703.

⁵ *Id.* at 3689-90, 3695.

⁶ *Id.* at 3690, 3703.

⁷ *Id.* at 3707-3710.

On March 24, 2000, the United States Court of Appeals for the D.C. Circuit vacated certain provisions of the *Reciprocal Compensation Ruling*, and remanded the matter to the Commission.⁸ The court ruled that the Commission had not adequately justified the application of its jurisdictional analysis in determining whether a call to an ISP is subject to the reciprocal compensation requirement of section 251(b)(5).⁹ The court noted that (1) the Commission failed to apply its definition of "termination" to its analysis;¹⁰ and (2) cases upon which the Commission relied in its end-to-end analysis can be distinguished on the theory that they involve continuous communications switched by IXC's, as opposed to ISPs, which are not telecommunications providers.¹¹ The court also found that a remand was required because the Commission did not provide a satisfactory explanation as to how its conclusions regarding ISP-bound traffic accord with the statutory definitions of "telephone exchange service" and "exchange access service."¹²

We seek comment on the issues identified by the court in its decision. In particular, we ask parties to comment on the jurisdictional nature of ISP-bound traffic, as well as the scope of the reciprocal compensation requirement of section 251(b)(5), and on the relevance of the concepts of "termination," "telephone exchange service,"¹³ "exchange access service,"¹⁴ and "information access."¹⁵ In addition, we seek to update the record in the pending rulemaking proceeding by inviting parties to comment on any *ex parte* presentations filed after the close of the reply period on April 27, 1999. Finally, we seek comment regarding any new or innovative inter-carrier compensation arrangements for ISP-bound traffic that parties may be considering or may have entered into, either voluntarily or at the direction of a state commission, during the pendency of this proceeding.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-

⁸ See *Bell Atl. Tel. Companies v. F.C.C.*, 206 F.3d 1 (D.C. Cir. 2000).

⁹ See *id.* at 3-6.

¹⁰ See *id.* at 6.

¹¹ See *id.* at 6-7.

¹² See *id.* at 8-9.

¹³ See 47 U.S.C. § 153(47).

¹⁴ See 47 U.S.C. § 153(16).

¹⁵ See 47 U.S.C. § 251(g); see also 47 U.S.C. § 153(20).

disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

Interested parties may file comments no later than July 21, 2000. Reply comments may be filed no later than August 4, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹⁶ When filing comments, please reference CC Docket Nos. 96-98, 99-68.

Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to ecfs@fcc.gov and include "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply.

An original and four copies of all comments and reply comments filed by paper must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 - 12th Street, S.W., TW-A325, Washington, D.C. 20554. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 - 20th Street, N.W., Washington, D.C. 20036, and one copy with the Chief, Competitive Pricing Division, 445 - 12th Street, S.W., T.W - A225, Washington, D.C. 20554.

Action by the Commission on June 22, 2000.

For further information, contact Rodney McDonald, Competitive Pricing Division, Common Carrier Bureau, (202) 418-1520.

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¹⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).